

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

ETHEL MCCOY, ET AL.

PLAINTIFFS

V.

NO. 4:00CV243-B-B

PEOPLES FINANCIAL SERVICES OF
THE DELTA, INC. AND FICTITIOUS
DEFENDANTS A, B AND C

DEFENDANTS

MEMORANDUM OPINION

This cause comes before the court on the plaintiffs' motion to remand. The court has duly considered the parties' memoranda and is ready to rule.

The plaintiffs brought this action in state court to recover actual and punitive damages arising out of consumer loan agreements between the plaintiffs and defendant Peoples Financial Services of the Delta, Inc. [Peoples]. The complaint alleges that the defendants "fraudulently represented to [the plaintiffs] that [they were] required to purchase the credit life insurance presented in order to obtain [their] requested loans." The complaint alleges state law claims of fraudulent representation, negligent and/or wanton hiring, training and supervision of agents/representatives, breach of fiduciary duties, and negligent and/or wanton misrepresentation. Peoples removed this cause pursuant to 28 U.S.C. § 1441(a) on the ground of federal question jurisdiction, 28 U.S.C. § 1331.

The threshold jurisdictional issue is whether the complaint raises an issue of federal law under the well-pleaded complaint doctrine. Metropolitan Life Ins. Co. v. Taylor, 481 U.S. 58, 63, 95 L. Ed. 2d 55, 63 (1987). Under the well-pleaded complaint rule, a federal question must appear on the face of the plaintiff's properly pleaded complaint to establish federal question jurisdiction. Caterpillar, Inc. v. Williams, 482 U.S. 386, 392, 96 L. Ed. 2d 318, 327 (1987). The plaintiff is "the master of the claim" and "may avoid federal jurisdiction by exclusive reliance on state law." Id.

The notice of removal alleges that "Plaintiffs' state law claims, at least in part, are in fact artfully

pled federal law claims" under the Truth-in-Lending Act, 15 U.S.C. § 1601 et seq. [TILA].¹ Under the artful pleading doctrine,²

where the plaintiff necessarily has available no legitimate or viable state cause of action, but only a federal claim, he may not avoid removal by artfully casting his federal suit as one arising exclusively under state law.

Carpenter v. Wichita Falls Indep. Sch. Dist., 44 F.3d 362, 366, 367 (5th Cir. 1995). Peoples contends that the plaintiffs' claims require proof of nondisclosure and that any duty to disclose arises only under TILA and federal regulations promulgated thereunder. The purpose of TILA is "to assure a meaningful disclosure of credit terms so that the consumer will be able to . . . avoid the uninformed use of credit." 15 U.S.C. § 1601(a). *See* Regulation Z, 12 C.F.R. §§ 226.4, 226.17 and 226.18 (mandating disclosure of credit terms, including credit insurance).

The complaint does not expressly allege a TILA claim or any other federal claim. The complaint states:

Plaintiffs' claims are brought solely under Mississippi law and Plaintiffs state that they do not bring any federal claims and/or disclaims [sic] any and all claims under any federal laws, statutes, or regulations.

It is undisputed that TILA does not invoke the complete preemption doctrine³ and Peoples does not contend that any of the plaintiffs' claims are not viable under state law. *See Miss. Code Ann. §§ 81-21-163, 83-53-21* (borrower's right to procure credit life insurance, if required by the creditor, from

¹Under 15 U.S.C. § 1640(e), district courts have original jurisdiction over TILA claims.

²The artful pleading doctrine is a narrow exception to the well-pleaded complaint doctrine to prevent manipulation of jurisdiction. *Carpenter v. Wichita Falls Indep. Sch. Dist.*, 44 F.3d 362, 367 (5th Cir. 1995); *Aaron v. National Union Fire Ins. Co.*, 876 F.2d 1157, 1161 (5th Cir. 1989), *cert. denied*, 493 U.S. 1074, 107 L. Ed. 2d 1028 (1990).

³*Greer v. Majr Financial Corp.*, 105 F. Supp. 2d 583, 590 (S.D. Miss. 2000) ("Congress specifically reserved the prerogative of states to enforce the requirements of TILA, and thus could not have intended to completely displace state law in this area.") (citing *Hart v. Bayer Corp.*, 199 F.3d 239, 244 (5th Cir. 2000)).

insurer of his choice).

Peoples asserts that the plaintiffs' fraud claim, in part, is a disguised TILA claim that Peoples failed to disclose to the plaintiffs their right to purchase credit life insurance from the insurance company of their choice. *See Carpenter*, 44 F.3d at 366 ("[T]o support removal, the defendant must locate the basis of federal jurisdiction in those allegations necessary to support the plaintiff's claim . . . [and] must show that a federal right is 'an element, and an essential one, of the plaintiff's cause of action.'"). The crux of the plaintiffs' claims for purchasing "credit life insurance they did not want or need" is alleged affirmative conduct on the part of the defendants in making false representations and/or negligent misrepresentations that "[the plaintiffs were] required to purchase the credit life insurance **presented** in order to **obtain [their] requested loans**." (Emphasis added).

Nondisclosure involves silence or concealment of certain facts, as distinguished from misrepresentation of facts, e.g., misrepresentations that credit life insurance was a prerequisite for obtaining the subject loans and that the plaintiffs were required to purchase and finance such insurance through Peoples. *Cf. Gandy v. Peoples Bank and Trust Co.*, 224 B.R. 340, 344 (S.D. Miss. 1998) ("Plaintiff's essential charge here is that her lender imposed improper charges on her credit transaction and failed to make the proper disclosures."). The plaintiff in *Gandy* "complain[ed] that the nature and cost of the [Collateral Protection Insurance] program were concealed or inadequately disclosed and challeng[ed] Peoples Bank's truthfulness and completeness of disclosures made related to the loan transaction at issue." *Id.* at 341-42. The disclosure requirements of TILA were held to be invoked "only in an insubstantial way" in a case in which the plaintiff alleged "that as a condition of securing [the subject loans], she was required to purchase various forms of credit life insurance issued by [the defendant insurers]" and that the cost of this insurance was in excess of insurance "the Plaintiff either already had or could have acquired from other sources." *Easterling v. Gulf Guar. Ins. Co.*, 60 F. Supp. 2d 586, 587, 588 (S.D. Miss. 1999). *See Carpenter*, 44 F.3d at 366 ("Generally, under section 1331, a suit arises under federal law if there appears on the face of the complaint some **substantial**, disputed question of federal law.") (emphasis added) (citation omitted). The allegations in

Easterling are more closely akin to those raised in the instant cause than the specific allegations of nondisclosure of "unauthorized and excessive insurance premiums (and interest thereon)" in *Gandy*. 224 B.R. at 341.

It is well settled that any doubts as to removal jurisdiction must be resolved in favor of remand. *Boston v. Titan Indem. Co.*, 34 F. Supp. 2d 419, 423 n.21 (N.D. Miss. 1999) (citations omitted), appeal dismissed without op., 199 F.3d 437 (5th Cir. 1999). The court finds that the complaint states viable state law claims independent of any TILA violation. The Fifth Circuit has stated:

It is not our task to determine exactly how Mississippi courts would pass on appellants' various theories of liability. We only need to decide whether, under a liberal review of Mississippi law or what it might be, arguable grounds exist for recovery under appellants' theories.

Paxton v. Weaver, 553 F.2d 936, 939 n.2 (5th Cir. 1977).

For the foregoing reasons, the court finds that the artful pleading doctrine does not apply in this cause since the alleged state law claims do not require construction of TILA disclosure requirements. Absent any claim federal in nature, the court must remand this action for lack of federal question jurisdiction pursuant to 28 U.S.C. § 1447(c).⁴

An order will issue accordingly.

THIS, the _____ day of April, 2001.

⁴On April 2, 2001, the plaintiffs filed a motion for leave to amend their brief in support of the instant motion to remand in order to argue an unpublished Mississippi Supreme Court decision issued on February 1, 2001. The plaintiffs contend that the decision "simply reiterates what was already the law in Mississippi [with respect to fiduciary duty]." Peoples objects to the motion on the grounds that the motion is untimely and the cited decision has not yet been released for publication and is distinguishable from the disclosure issues in this cause. Since the plaintiff cites the subject decision as authority in accord with preexisting Mississippi law and since the court finds that the claims as alleged in the complaint do not invoke TILA disclosure requirements, the plaintiffs' motion for leave to amend the brief will be denied.

NEAL B. BIGGERS, JR.
SENIOR U.S. DISTRICT JUDGE